

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA08-768

CHARLES ROHR, SR. and
ROCHELLE ANN NALLEY

APPELLANTS

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES, and MINOR
CHILD

APPELLEES

Opinion Delivered November 19, 2008

APPEAL FROM THE LONOKE
COUNTY CIRCUIT COURT,
[NO. JV-2006-371]

HONORABLE PHILLIP T.
WHITEAKER, JUDGE

AFFIRMED

KAREN R. BAKER, Judge

Charles Rohr, Sr. and Rochelle Nalley have appealed the termination of their parental rights to M.R., born on April 2, 2002. We affirm as to both parents.

This case began when Rochelle was arrested for slapping Charles's eleven-year-old daughter in the face and hitting her on the leg with a metal rod. On September 20, 2006, DHS filed a petition for emergency custody of M.R. and her half-siblings on the basis of the following affidavit:

On Sept. 17, 2006, FSW Johnson received a call from the Cabot Police Dept. stating that they have arrested Rochelle Nalley for domestic battery 3rd and Charles Rohr for endangering the welfare of a minor. The family resides at 16 Jay Circle Cabot, AR. Rochelle Nalley and minor child R.R. had an altercation regarding a cell phone. Rochelle slapped R.R. in the face and also hit R.R. with a metal rod on her leg. Charles Rohr, SR. was present at the home and did not intervene. Charles Rohr had been arrested on September 3, 2006 for disorderly conduct and endangering the welfare of a minor for having a trashed home. On September 17, 2006 the home was environmentally neglected with a bird flying around, old food all over the house, flies

all over the house, a dog running in and out of the home, clothes all over the house, and the home had lights but no light bulbs but in one room. Charles Rohr is reported to be an alcoholic and stated that he had been drinking earlier that day. The officer reported that 4 year M.R. was hid at the neighbor house. Neither the agency nor the Cabot Police department was unable [sic] to locate M.R. M.R. was brought to the Lonoke DHHS office by her mother Rochelle Nalley on September 18, 2006 at 12:30 p.m. C.R. and R.R. both reported to the FSW that they were in foster care in the State of California for over 2 years. The agency is unaware of why the children were in foster care. Rochelle Nalley tested positive for opiates on September 18, 2006. R.R. was covered with several sores that was [sic] infected and reported that she had not been to the doctor. M.R. had several old sores on her when she arrived as well. Due to the parents being arrested, Charles Rohr's failure to protect, and the home being environmentally neglected FSW Johnson placed a 72 hour hold on C.R., R.R., M.R., and S.B.

An adjudication hearing was held on November 6, 2006, and appellants appeared with their attorneys. In the resulting order, the court continued M.R.'s custody with DHS; set concurrent goals of reunification and adoption; and approved DHS's case plan. Appellants were ordered to attend parenting classes; to attend counseling; to obtain and maintain stable housing and employment; to submit to random drug screens; to submit to drug-and-alcohol assessments; to remain drug free; to participate in homemaker services; and to submit to psychological evaluations. The court ordered both parents to pay child support.

A review hearing was held on March 5, 2007. The court noted that appellants had not fully complied with the case plan and the court orders. It stated that Charles had not maintained stable housing or employment; that his home was being foreclosed; that his utilities had been turned off after the last hearing but were back on; that he missed his psychological evaluation; that he had not consistently attended visitation; and that he had not provided proof of a drug-and-alcohol assessment; however, he had submitted to drug screens and had attended some parenting classes. The court stated that Rochelle had not maintained

stable housing but had attended parenting classes and counseling; had maintained employment; and had participated in visitation. The court said that she did not submit to a drug screen that day; therefore, it was deemed positive. The court stated that she had missed her psychological evaluation and had not provided documentation of her drug-and-alcohol assessment.

A permanency-planning hearing was held on September 17, 2007. In the resulting order, the court stated:

Regarding M.R., the goal shall remain reunification with Charles Rohr and Rochelle Nalley Rohr. The cause for removal from their home has been remedied, however strict time frames and strict compliance with this court's orders and the terms of the case plan is mandatory for the goal to remain reunification at the 15 month PPH. The court does not approve the recommendation of the Department to pursue TPR and adoption at this time.

The court found that, although Charles had obtained and maintained stable housing, it was through the assistance of a relative; that he had attended counseling; that he had submitted to some of the drug screens; that he had participated in homemaker services; and that he had attended some visitation. The court found that he had not submitted to a psychological evaluation, even though two appointments had been made for him. The court also found that he had failed to obtain or maintain stable employment; to remain drug-and-alcohol free; or to attend or provide proof of attendance at AA/NA meetings. The court noted that he had, on that day, provided copies of his attendance records for the past month and had provided the July records at the August staffing.

The court found that Rochelle had obtained and maintained stable housing, even though it was through the assistance of Charles's relative; that she had attended counseling;

that she had submitted to drug screens; that she had participated in homemaker services; and that she had attended visitation. The court found that she had not submitted to a psychological evaluation, even though two appointments had been made for her; that she had failed to obtain and maintain stable employment; and that she had failed to remain free of drugs and alcohol. The court noted that she had provided her AA/NA attendance records for the past month and had provided the July records at the August staffing. The court ordered appellants to strictly comply with the following: to remain drug free; to attend AA/NA meetings weekly and to provide proof; to submit to random drug screens; to pay child support; to obtain counseling as recommended; and to follow the case plan and orders of the court. The court ordered DHS to make referrals, for the third time, for appellants' psychological evaluations.

At the fifteen-month permanency-planning hearing, the court admitted into evidence the permanency-planning court report, the CASA report, and the reports of appellants' psychological evaluations. The court found that Charles had failed to actively participate in counseling; to obtain and maintain stable employment; to remain current on child support; and to attend AA/NA twice per week or to provide timely proof of attendance; and that he had "little interest in counseling or participation." The court found that he had completed parenting classes and submitted to a drug-and-alcohol assessment and a psychological evaluation. The court found that Rochelle had failed to actively participate in counseling; to attend AA/NA twice per week or provide timely proof of attendance; and to remain current on child support. The court stated that she also had shown little interest or progress in

counseling. The court noted that Rochelle had completed parenting classes; had submitted to a drug-and-alcohol assessment; had maintained employment; and had attended visitation. The court set the goal of the case as termination.

DHS filed a petition for termination of appellants' parental rights on February 19, 2008. The termination hearing was held on March 31, 2008, at which appellants appeared with their attorneys. In the resulting order, the trial court made the following findings:

This Court has made specific findings in previous hearings regarding the parents' compliance. On March 5, 2007, the Court found that "Charles Rohr has not maintained stable housing or employment. His home is being foreclosed and he has had utilities turned off since the last hearing, although they are back on at this time. He missed his psychological evaluation. Mr. Rohr has attended some parenting classes and counseling and has submitted to drug screens. He has not consistently attended visitation or provided proof of a drub/alcohol [sic] assessment." On that same date, regarding the mother, this Court found that "Rochelle Nalley had not maintained stable housing. She has attended parenting and counseling. She has maintained employment and has participated in visitation. Ms. Nalley did not submit to a drug screen today, therefore that screen is deemed to be positive. She missed her psychological evaluation and has not provided documentation of her drug/alcohol assessment."

At the time of the Permanency Planning hearing on September 17, 2007, this Court still made findings of non compliance. On that date, this Court found that a) Charles Rohr, Sr. HAS obtained and maintained stable housing even though it was through the assistance of a relative; he has attended counseling, submitted to some of the requested drug screens, participated in home maker services and attended some of the visitations He HAS NOT submitted to a psychological evaluation even though two appointments were made for him; he has failed to obtain or maintain stable employment and has failed to remain drub/alcohol [sic] free and has not complied with attending or providing proof of AA/NA attendance. Mr. Rohr has today provided copies of his AA/NA attendance records for the past month and had provided the records for July at the August staffing. b) Rochelle Nalley Rohr HAS obtained and maintained stable housing even though it was through the assistance of Mr. Rohr's relative. She has attended counseling, submitted to drug/screens, participated in home maker services and has attended visitation. She HAS NOT submitted to a psychological evaluation even though two appointments were made for her; she has failed to obtain/maintain stable employment, and has failed to remain drug/alcohol

free. Ms. Nalley Rohr has today provided copies of her AA/NA attendance records for the past month and had provided the records for July at the August staffing.

At the PPH, the Department requested and recommended a change of the goal to adoption, but the Court denied that request upon strict compliance of the parents with the following requirements:

- Remain drug free
- Attend AA/NA at least weekly & provide proof weekly to the Department
- Submit to random drug screens
- Submit to psychological evaluations
- Pay child support as ordered
- Counseling as recommended by counselor
- Terms of the case plan
- Any prior orders of this court

On 12-3-07 at the 15-month Permanency Planning Hearing (which has a scrivener's error listing the date of the hearing as August 6, 2007), this Judge was not the presiding judge on that date, but that does not matter. The sitting judge on that date found that Mr. Rohr had failed to actively participate in counseling, has failed to obtain/maintain stable employment, had failed to remain current on child support, has failed to attend AA/NA (scrivener's error reflected twice per week) and provide timely proof of attendance, and had little interest in counseling, but that Mr. Rohr had complied in that he had completed parenting, submitted to drug and alcohol assessment and attend psychological evaluation and participated in visitation. The sitting judge also found that Rochelle Nalley has failed to actively participate in counseling, has failed to attend AA/NA (scrivener's error reflected twice per week) or provide timely proof of attendance, has failed to remain current on child support, and had little interest or progress in counseling, but that Ms. Nalley had complied in that she completed parenting classes and submitted to a drug and alcohol assessment and maintained employment and attended visits. Based on these findings, the sitting judge ordered the Department to file the petition to terminate the parental rights.

Today's evidence and compliance since the December 2007 hearing are: There have been some nominal child support payments made by Ms. Nalley-Rohr. There have been some nominal AA/NA attendance by both parents, and at least both parents attended their psychological evaluations.

The purpose of a termination of parental rights is to provide permanency for a child when it is against the health, welfare and safety to return that child to the parents, and said determination has to be from the child's perspective.

This Court finds by clear and convincing evidence based on the facts, exhibits, and testimony that M.R. was adjudicated dependent neglected and has remained out of the home of her parents in excess of twelve months. The Department has provided meaningful and sufficient efforts to rehabilitate the parents, but despite those efforts, the parents have willfully failed to remedy the situation in order to obtain the return of their child. The factors which needed remedied are not about the environment alone. It also includes the surrounding conditions of the family unit mentioned previously in this Court's findings of facts. This Court and the Department have tried services to these parents for a year and a half and we are still not any closer than when M.R. was removed from their care.

Both parents then pursued this appeal.

On appeal, appellants do not dispute that M.R. was out of their custody for over twelve months; that Charles made no payments of court-ordered child support; that Rochelle paid some, but not even half, of her child-support obligation; that, because they had no working vehicle, transportation was a problem; and that their counselor decided to end counseling because of their alleged lack of participation. They challenge the court's finding that they failed to remedy the conditions that had caused M.R. to be taken into custody¹ and assert that, although their current circumstances are "maybe not ideal," they are manageable. They argue that, with more time and reunification services, they could provide a suitable home for M.R. and that returning her to their custody would not pose a risk to her health and safety. They direct our attention to the facts that, at the time of the termination hearing, their home was clean; that they were attending AA/NA meetings at a more convenient location; and that Charles had unsupervised visitation with his children by his first marriage. They argue that they both had secured employment and that neither of them had

¹See Ark. Code Ann. § 9-27-341(b)(3)(B)(i)(a) (Repl. 2008).

demonstrated a drug problem since the case was opened.

Because adoptability was established through the testimony of Stacey Johnson, a family service worker, there was no requirement that potential harm to M.R. be proven. *See McFarland v. Ark. Dep't of Human Servs.*, 91 Ark. App. 323, 210 S.W.3d 143 (2005). Even if adoptability had not been established, Rochelle's battery of her stepdaughter and Charles's failure to protect her would support such a finding. It is clear that termination was in M.R.'s best interest because she would be harmed by the uncertainty and lack of permanency and could not continue in foster care indefinitely. *See Bearden v. Ark. Dep't of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397 (2001).

It was also proven that appellants failed to remedy the root cause of the environmental neglect: their history of substance abuse. Rochelle tested positive for opiates in September 2006 and smelled of alcohol at her drug-and-alcohol assessment in February 2007; she refused to participate in therapeutic homework recommended by the drug counselor; the counselor described her as being at risk of possible drug or alcohol use because of the stressors in her life; Charles refused to participate in AA/NA meetings during most of the case; and he refused to take at least one drug test.

It is true that appellants partially complied with the case plan and court orders. Rochelle maintained low-paying but steady work at Burger King. The caseworker, Kismich Youngblood, readily agreed that they had cleaned up their home; that they had completed parenting classes; that they had participated in homemaker services; that they had maintained stable housing; that Rochelle had been steadily employed; that visitation had gone well; that

M.R. has a strong bond with both parents; and that there had been no further arrests or evidence of drug and alcohol abuse (except when Charles once failed to produce a urine specimen and Rochelle tested positive for hydrocodone, for which she had a prescription).

Nevertheless, we agree with the trial court that, even though appellants' house was clean at the time of the termination hearing, and they partially complied with the case plan and court orders, there was little evidence that they had corrected the underlying problems that led to M.R.'s neglect. The caseworker testified that appellants' participation in NA/AA meetings was not regular; that Charles never provided proof of employment or income; and that they had no transportation. Most compelling was the testimony of the counselor, Latonia Cross-Tweedy, who said that she saw appellants from February 15, 2007, until August 2, 2007, and that she terminated their sessions because she could build no rapport with them; that they did not cooperate with her; that they blamed others, especially their children, for their problems; and that Rochelle was hostile. She said that counseling was unsuccessful and that they "could not move forward in any shape, form, or fashion."

Other factors also support the trial court's decision: appellants' failure to provide significant material support, *see* Ark. Code Ann. section 9-27-341(b)(3)(B)(ii)(a) (Repl. 2008), to which Brenda Manuel, with OCSE, testified, and "other factors" that arose during the proceeding. *See* Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a) (Repl. 2008). Charles paid no child support and Rochelle paid less than half of what she should have paid. Such "other factors" were appellants' failure to fully comply with the court's orders and the case plan by skipping two scheduled appointments for psychological exams; finally submitting to such

exams fourteen months after M.R. was removed from their custody; their unwillingness to fully participate in counseling, which resulted in their counselor's terminating the relationship; and Charles's failure to produce any documentation that he was employed. *See Jones v. Ark. Dep't of Human Servs.*, 361 Ark. 164, 205 S.W.3d 778 (2005).

Affirmed.

BIRD and MARSHALL, JJ., agree.